

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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STEPHEN FLANAGAN, as a Trustee of the General Building Laborers' Local 66 Vacation Fund, STEPHEN FLANAGAN, as a Trustee of the General Building Laborers' Local 66 Pension Fund, STEPHEN FLANAGAN, as a Trustee of the General Building Laborers' Local 66 Welfare Fund, STEPHEN FLANAGAN, as a Trustee of the General Building Laborers' Local 66 Annuity Fund, STEPHEN FLANAGAN, as a Trustee of the General Building Laborers' Local 66 Employer Cooperative and Educational Trust Fund, STEPHEN FLANAGAN, as a Trustee of the General Building Laborers' Local 66 Greater NY Laborers' Employer Cooperative and Educational Trust Fund, STEPHEN FLANAGAN, as a Trustee of the General Building Laborers' Local 66 Training Program, STEPHEN FLANAGAN, as a Trustee of the General Building Laborers' Local 66 New York State Health and Safety Fund, and STEPHEN FLANAGAN, as Business Manager of General Building Laborers' Local Union No. 66 of the Laborers' International Union of North America, AFL-CIO,

ADOPTION ORDER
19-CV-0415 (JS) (AKT)

Plaintiff,

-against-

T.R. WHITNEY INC. and RICHARD D. WHITNEY

Defendants.

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APPEARANCES

For Plaintiff: William Troy LaVelle, Esq.
LaVelle Law & Associates P.C.
57 East Main Street
Patchogue, New York 11772

For Defendants: No appearance.

SEYBERT, District Judge:

Plaintiff Stephen Flanagan ("Plaintiff"), in his capacity as Trustee and fiduciary of at least eight employee benefit plans, commenced this action on January 22, 2019 asserting violations of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001, et seq. ("ERISA"). (See Compl., D.E. 1.) On December 10, 2019, Plaintiff filed a motion for a default judgment against Defendants (Mot., D.E. 21) and on December 11, 2019, this Court referred the motion to Magistrate A. Kathleen Tomlinson for a report and recommendation (Dec. 11, 2019 Elec. Order).

On August 26, 2020, Judge Tomlinson issued a Report and Recommendation ("R&R," D.E. 23) recommending that the Court grant in part and deny in part Plaintiff's motion. Specifically, Judge Tomlinson recommended that the Court grant the motion as against T.R. Whitney Inc. (R&R at 10-12, 17), and deny the motion with respect to the individually named defendant, Richard Whitney (id. at 12-17). Judge Tomlinson also recommended that the Court award Plaintiff \$24,739.02¹ in damages for: (1) \$15,807.32 in unpaid contributions; (2) \$3,140.24 in interest on the unpaid contributions; (3) \$3,161.46 in liquidated damages; (4) \$1,750.00 in attorneys' fees; and (5) \$880.00 in costs and disbursements. (Id. at 28-29.)

¹ The R&R inadvertently calculated the total amount of damages as \$22,989.02. The correct total is \$24,739.02.

Judge Tomlinson directed Plaintiff to serve a copy of the R&R to Defendants by August 31, 2020. (Id. at 29.) After Plaintiff failed to comply with Judge Tomlinson's order regarding service, on October 6, 2020, this Court directed Plaintiff to serve a copy of the R&R to Defendants. (Oct. 6, 2020 Elec. Order.) On October 7, 2020, Plaintiffs served the R&R as well as the October 6, 2020 Electronic Order to Defendants. (Aff. Serv., D.E. 24.)

The time to object has expired and no objections to the R&R have been filed. Upon careful review and consideration, the Court finds Judge Tomlinson's R&R to be comprehensive, well-reasoned, and free of clear error. Accordingly, the Court ADOPTS the R&R (D.E. 23) in its entirety and Plaintiff's motion (D.E. 21) is GRANTED as against defendant T.R. Whitney Inc. and DENIED as against defendant Richard Whitney. Plaintiff is awarded \$24,739.02 in damages, accounting for: (1) \$15,807.32 in unpaid contributions; (2) \$3,140.24 in interest on the unpaid contributions; (3) \$3,161.46 in liquidated damages; (4) \$1,750.00 in attorneys' fees; and (5) \$880.00 in costs and disbursements.

The Clerk of the Court is respectfully directed to enter judgment accordingly and mark this case CLOSED.

SO ORDERED.

/s/ JOANNA SEYBERT

Joanna Seybert, U.S.D.J.

Dated: October 27, 2020
Central Islip, New York